

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

NEIL O'BRIEN,	)	1:12-CV-2017 AWI SAB
	)	
Plaintiff,	)	ORDER VACATING
v.	)	JANUARY 28, 2013 HEARING
	)	AND ORDER ON
DR. JOHN WELTY, et al.,	)	DEFENDANTS'S MOTION TO
	)	DISMISS
Defendants.	)	
	)	(Doc. No. 10)

Defendants filed a Rule 12(b)(6) motion to dismiss on December 18, 2012. See Doc. No. 10. Hearing on this motion is set for January 28, 2013.

On January 14, 2013, the parties filed a stipulation for Plaintiff to file an amended complaint, Plaintiff filed a first amended complaint, and the Magistrate Judge signed the stipulation. The active complaint is now the First Amended Complaint (Doc. No. 14). The "amended complaint supersedes the original, the latter being treated thereafter as non-existent." Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Because the December 18 motion to dismiss attacks a now superseded pleading, the motion to dismiss is moot. The Court will deny the motion and vacate the hearing.

Accordingly, IT IS HEREBY ORDERED that:

1. The January 28, 2013 hearing date is VACATED; and
2. Defendants' motion to dismiss (Doc. No. 10) is DENIED as moot.

IT IS SO ORDERED.

Dated: January 16, 2013



SENIOR DISTRICT JUDGE